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***Superseded 5/10/2016***

**31A-37-301 Incorporation -- Organization.**

- (1) A pure captive insurance company or a sponsored captive insurance company shall be incorporated as a stock insurer with the capital of the pure captive insurance company or sponsored captive insurance company:
  - (a) divided into shares; and
  - (b) held by the stockholders of the pure captive insurance company or sponsored captive insurance company.
- (2) A pure captive insurance company or a sponsored captive insurance company formed as a limited liability company shall be organized as a members' interest insurer with the capital of the pure captive insurance company or sponsored captive insurance company:
  - (a) divided into interests; and
  - (b) held by the members of the pure captive insurance company or sponsored captive insurance company.
- (3) An association captive insurance company or an industrial insured captive insurance company may be:
  - (a) incorporated as a stock insurer with the capital of the association captive insurance company or industrial insured captive insurance company:
    - (i) divided into shares; and
    - (ii) held by the stockholders of the association captive insurance company or industrial insured captive insurance company;
  - (b) incorporated as a mutual insurer without capital stock, with a governing body elected by the member organizations of the association captive insurance company or industrial insured captive insurance company; or
  - (c) organized as a reciprocal.
- (4) A captive insurance company formed as a corporation may not have fewer than three incorporators of whom one shall be a resident of this state.
- (5) A captive insurance company formed as a limited liability company may not have fewer than three organizers of whom one shall be a resident of this state.
- (6)
  - (a) Before a captive insurance company formed as a corporation files the corporation's articles of incorporation with the Division of Corporations and Commercial Code, the incorporators shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed corporation will promote the general good of the state.
  - (b) In considering a request for a certificate under Subsection (6)(a), the commissioner shall consider:
    - (i) the character, reputation, financial standing, and purposes of the incorporators;
    - (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;
    - (iii) any information in:
      - (A) the application for a certificate of authority; or
      - (B) the department's files; and
    - (iv) other aspects that the commissioner considers advisable.
- (7)
  - (a) Before a captive insurance company formed as a limited liability company files the limited liability company's articles of organization with the Division of Corporations and Commercial Code, the limited liability company shall obtain from the commissioner a certificate finding that

the establishment and maintenance of the proposed limited liability company will promote the general good of the state.

(b) In considering a request for a certificate under Subsection (7)(a), the commissioner shall consider:

- (i) the character, reputation, financial standing, and purposes of the organizers;
- (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the managers;
- (iii) any information in:
  - (A) the application for a certificate of authority; or
  - (B) the department's files; and
- (iv) other aspects that the commissioner considers advisable.

(8)

(a) A captive insurance company formed as a corporation shall file with the Division of Corporations and Commercial Code:

- (i) the captive insurance company's articles of incorporation;
- (ii) the certificate issued pursuant to Subsection (6); and
- (iii) the fees required by the Division of Corporations and Commercial Code.

(b) The Division of Corporations and Commercial Code shall file both the articles of incorporation and the certificate described in Subsection (6) for a captive insurance company that complies with this section.

(9)

(a) A captive insurance company formed as a limited liability company shall file with the Division of Corporations and Commercial Code:

- (i) the captive insurance company's certificate of organization;
- (ii) the certificate issued pursuant to Subsection (7); and
- (iii) the fees required by the Division of Corporations and Commercial Code.

(b) The Division of Corporations and Commercial Code shall file both the certificate of organization and the certificate described in Subsection (7) for a captive insurance company that complies with this section.

(10)

(a) The organizers of a captive insurance company formed as a reciprocal insurer shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed association will promote the general good of the state.

(b) In considering a request for a certificate under Subsection (10)(a), the commissioner shall consider:

- (i) the character, reputation, financial standing, and purposes of the incorporators;
- (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;
- (iii) any information in:
  - (A) the application for a certificate of authority; or
  - (B) the department's files; and
- (iv) other aspects that the commissioner considers advisable.

(11)

(a) An alien captive insurance company that has received a certificate of authority to act as a branch captive insurance company shall obtain from the commissioner a certificate finding that:

- (i) the home state of the alien captive insurance company imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that state; and
  - (ii) after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, and other relevant information, the establishment and maintenance of the branch operations will promote the general good of the state.
- (b) After the commissioner issues a certificate under Subsection (11)(a) to an alien captive insurance company, the alien captive insurance company may register to do business in this state.
- (12) At least one of the members of the board of directors of a captive insurance company formed as a corporation shall be a resident of this state.
- (13) At least one of the managers of a limited liability company shall be a resident of this state.
- (14) At least one of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer shall be a resident of this state.
- (15)
  - (a) A captive insurance company formed as a corporation under this chapter has the privileges and is subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter.
  - (b) If a conflict exists between a provision of the general corporation law and a provision of this chapter, this chapter shall control.
  - (c) Except as provided in Subsection (15)(d), the provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.
  - (d) Notwithstanding Subsection (15)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.
  - (e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.
- (16)
  - (a) A captive insurance company formed as a limited liability company under this chapter has the privileges and is subject to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405, as well as the applicable provisions in this chapter.
  - (b) If a conflict exists between a provision of the limited liability company law and a provision of this chapter, this chapter controls.
  - (c) The provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.
  - (d) Notwithstanding Subsection (16)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.
  - (e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.
- (17)
  - (a) A captive insurance company formed as a reciprocal insurer under this chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this chapter.
  - (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions of this chapter with respect to a captive insurance company, this chapter shall control.

- (c) To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer formed under this chapter unless the provisions are expressly made applicable to a captive insurance company under this chapter.
  - (d) In addition to the provisions of this Subsection (17), a captive insurance company organized as a reciprocal insurer that is an industrial insured group has the privileges of Section 31A-4-114 in addition to applicable provisions of this title.
- (18)
- (a) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may not authorize a quorum of a board of directors to consist of fewer than one-third of the fixed or prescribed number of directors as provided in Section 16-10a-824.
  - (b) The certificate of organization of a captive insurance company formed as a limited liability company may not authorize a quorum of a board of managers to consist of fewer than one-third of the fixed or prescribed number of directors required in Section 16-10a-824.